

S.N. 10/ 018,515

REMARKS

Applicants acknowledge receipt of the Final Rejection of 27 JUNE 2003 and request that the Examiner exercise his discretion to enter the proposed amendment to claims 1-3. This amendment is **necessary** to distinguish over the newly-applied art, and **could not have been presented earlier** because Applicants had not previously seen the new grounds of rejection. Therefore, this amendment complies with Rule 116(c), and should be entered.

Independent claims 1, 2 and 3 are proposed to be amended to recite the feature that intermittent "injection" or spraying occurs while the aerosol valve is open at port 11. This feature is supported in the specification at page 15, lines 19-26.

As shown in the drawings, downstream from the main aerosol valve, a piston 5 is automatically pushed back and forth by a pair of opposing springs 7 and 8, throttling the flow of liquid being sprayed, so that the injection is intermittent rather than continuous, even when the aerosol valve from cylinder 2 is continuously open. This is explained in detail at pages 16-17. Page 12, lines 7-25, set forth how the ratio of injection time to stop time is set in the intermittent mechanism 5, 6, 7, 8.

CLAIM REJECTION -- SECTION 102(b)

All pending claims were rejected under § 102(b) over FUKUDA (USP 4,175,678) which discloses a single outlet valve 10 which opens when temperature rises, and closes when temperature dips. By contrast, the present invention has a first valve at 11, followed by a second stage, comprising the intermittent mechanism 5, 6, 7, 8. Even while the first valve is continuously open, the second stage causes the injection or spraying to be intermittent, in accordance with a time ratio set in the second stage. The time ratio is selected such that pleasant skin cooling is achieved, without the "freezing" sensation which continuous spraying would cause. FUKUDA fails to suggest such functionality.

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Paragraph 2 construed the claims to mean that "the device only has one component and that component is a valve." Upon entry of the proposed amendment, independent claims 1-3 will explicitly recite the intermittent mechanism 5, 6, 7, 8 downstream of first aerosol valve 11. The structure of the intermittent mechanism is what enables setting specific time ratios for ON/OFF spraying. In light of this structural change, the recitation of the time ratios in the claims should be given patentable weight. For the advantages provided by the time ratios, the Examiner is referred to the Amendment of NOV. 26, 2002, pages 5-6.

CONCLUSION

Claims 1-3 and 5-21, as proposed to be amended, are directed to a novel and useful intermittent injection system, particularly adapted to applying active ingredients to human skin, which system is neither suggested or made obvious by the art of record. It is respectfully submitted that the claims patentably distinguish over FUKUDA, KUBO, TUBAKI, KURZ, and the other art of record, taken singly or in combination. Allowance of the claims, and passage to issue, are solicited.

No additional claims fee or extension fee is believed required; if any is required, please charge Dep. Account 23-0442.

If the Examiner notes any remaining informalities in the application, or wishes to make any suggestions to place the application in condition for allowance, he is invited to telephone the undersigned.

Respectfully submitted,

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